S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

CITY OF DETROIT and DETROIT FIRE DEPARTMENT, Plaintiffs/Counter Defendants-Appellees, v DETROIT FIRE FIGHTERS ASSOCIATION and BRIAN KELLEY, Defendants/Counter Plaintiffs-Appellants.	UNPUBLISHED August 15, 2006 No. 268645 Wayne Circuit Court LC No. 05-505325-CL

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order granting plaintiffs' motion for summary disposition and denying defendants' motion for the same. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

No dispute exists regarding the underlying facts. Defendant Detroit Fire Fighters Association filed a grievance against the City of Detroit on behalf of one of its members, defendant Brian Kelley. On August 26, 2004, an arbitrator ruled in Kelley's favor, awarding him $22,616.77 in back pay. The arbitrator ordered the city to "promptly reimburse" Kelley and retained jurisdiction over the matter for thirty days to assist, if necessary, with the implementation of the award. When the city failed to pay within this period, the arbitrator extended her jurisdiction. Although the city paid the award on December 17, 2004, the arbitrator issued a supplemental opinion and award finding that the city should have paid Kelley within thirty days of the original award. She therefore ordered the city to pay interest on the award for the period of excessive delay between September 26, 2004, and the day of actual payment. Plaintiffs then filed suit asserting that by awarding Kelley interest, the arbitrator exceeded her powers under the parties' collective bargaining agreement. The trial court granted summary disposition in favor of plaintiffs and the instant appeal followed.

The decision to grant or deny summary disposition presents a question of law that this Court reviews de novo. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Summary disposition is appropriate under MCR 2.116(C)(10) when there is "no

genuine issue as to any material fact" and the moving party is entitled to judgment as a matter of law. A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Arbitration constitutes "a favored means of resolving labor disputes" and courts may engage in only limited review of arbitration awards. *Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986). A "court may not review an arbitrator's factual findings or decision on the merits." *Id*.; see also *Service Employees International Union Local 466M v Saginaw*, 263 Mich App 656, 660; 689 NW2d 521 (2004). Rather, it may only determine whether the award went beyond the contractual authority of the arbitrator. *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). "If an arbitrator, in granting an award, did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the arbitration agreement, judicial review effectively ceases." *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989).

Further, when not specifically limited by the terms of a collective bargaining agreement, an arbitrator has broad authority to "fashion a remedy which considers the relative faults of the parties." *Michigan Ass'n of Police v City of Pontiac*, 177 Mich App 752, 759; 442 NW2d 773 (1989). As this Court has explained:

> When parties agree to submit a matter to arbitration, they invest the arbitrator with sufficient discretion to resolve their dispute in a manner which is appropriate under the circumstances. Where the collective bargaining agreement is silent as to permissible remedies, an arbitrator does not add to the obligations contractually assumed by the parties by fashioning a remedy which is appropriate under the circumstances. [*Id* at 760.]

Plaintiffs argued below, and the trial court held, that the arbitrator exceeded her authority under the parties' collective bargaining agreement. But the section of the agreement concerning arbitration grants arbitrators the express authority to award employees back wages. Further, it states that they may act to enforce the collective bargaining agreement. Rather than creating new terms, the arbitrator ordered the city to pay interest on Kelley's back pay as a means of enforcing its original order requiring the award to be paid promptly. Such an action falls within the arbitrator's broad authority to fashion an appropriate remedy. *Michigan Ass'n of Police*, *supra* at 759-760. Consequently, we find that the arbitrator acted within the scope of her authority under the terms of the collective bargaining agreement.

The trial court likewise found that the arbitrator had the authority to order the city to pay the award within a certain time and impose sanctions if it failed to do so. Nevertheless, it granted plaintiffs' motion for summary disposition because, rather than specifying when payment would be considered tardy in the initial award, the arbitrator merely ordered the city to "promptly" reimburse Kelley. The trial court held that because the term "promptly" is open to different interpretations, the arbitrator could not order plaintiffs to pay interest for failing to pay the award within thirty days.

In reaching this decision, the trial court went beyond the limited review of arbitration awards permitted under Michigan law. Review of the supplemental award should have ceased once the trial court determined that the arbitrator had authority under the collective bargaining agreement to impose sanctions for late payment. *Police Officers Ass'n*, *supra* at 343. As the trial court noted, the term "promptly" is open to a range of reasonable interpretations. Where reasonable minds may disagree on an issue, a question of fact exists. *West*, *supra* at 183. In determining that a delay of more than thirty days did not constitute prompt payment, the arbitrator made a finding of fact. Such findings are not open to review by the courts. *Service Employees International*, *supra* at 660. Consequently, we find that the trial court erred in overturning the arbitrator's decision to award interest and in granting plaintiffs' motion for summary disposition.

Reversed and remanded for entry of an order granting summary disposition in favor of defendants and reinstating the arbitrator's award of interest. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder